

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-220390.3

DATE: March 6, 1986

MATTER OF: Systematics, Inc.

DIGEST:

Protest against the agency's termination of a purchase order is untimely where the protester did not file the protest in our Office within 10 working days after it learned of the basis of protest.

Systematics, Inc. (Systematics), protests the termination of a purchase order for a mechanized movable shelving system awarded to it by the Naval Underwater System Center (NUSC) under request for quotations (RFQ) No. N66604-85-Q-F351. NUSC canceled the order because the award process was deficient.

Prior to the closing date, two quoters, which included Systematics, were advised during a site visit that they could submit alternative designs to the RFQ's listed specifications using existing shelving. Award was made to Systematics on the basis of its alternative design. After a protest from Donnegan Systems, Inc. (Donnegan), NUSC determined that award to Systematics was improper because the specifications did not reflect its minimum needs, the RFQ was not properly amended, and quoters did not compete on an equal basis. Systematics contends that the order should not have been canceled on the basis of the Donnegan protest.

We dismiss the protest as untimely.

NUSC reports that Systematics had both oral and written notice of its decision to terminate the order no later than December 17, 1985. In a letter addressed to our Office dated December 10, 1985, which also was sent to Systematics via Federal Express, NUSC advised our Office that the Donnegan protest was moot because it intended to terminate the purchase order to Systematics. Further, on December 17, 1985, NUSC specifically advised Systematics by telephone of

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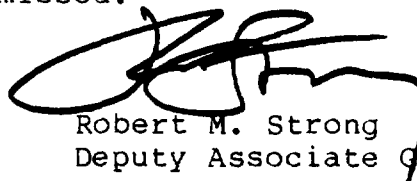
its decision to terminate the order and the reason behind the termination, namely, the Donnegan protest. Written confirmation of the decision, including copies of the Donnegan protest and the termination order, was sent to Systematics on December 20, 1985. Systematics protested the termination by letter dated December 30, 1985, which was received by our Office on January 3, 1986.

Under our regulations, a protest must be filed not later than 10 working days after the basis of protest is known or should have been known, whichever is earlier. 4 C.F.R. § 21.2(a)(2) (1985). Moreover, our regulations provide that the term filed means receipt of the protest submission in our Office. See 4 C.F.R. § 21.2(b).

While Systematics argues that the order was not legally canceled until December 20, 1985, it is clear that it knew of the action by December 17.

Since Systematics knew of the basis of protest on December 17, 1985, and did not file its protest until January 3, 1986, we find the protest untimely. See Brink Construction Co., B-219413, B-219413.2, July 11, 1985, 85-2 C.P.D. ¶ 43.

The protest is dismissed.



Robert M. Strong
Deputy Associate General Counsel